

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 20, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

AARON JOSEPH CUNNINGHAM,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. 4:22-CV-05165-MKD

ORDER TO PROCEED *IN FORMA*
PAUPERIS AND ORDER
SUMMARILY DISMISSING
ACTION

ECF Nos. 4, 5, 6, 8, 9, 12, 15, 16

Petitioner, a federal pretrial detainee¹ currently confined at Spokane County Jail, filed this *pro se* Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241. Respondent has not been served.

Petitioner seeks leave to proceed *in forma pauperis*. ECF Nos. 10, 14. An officer at the Benton County Jail has supplied “a certificate . . . showing the amount of money or securities that the petitioner has in any account in the

¹ Petitioner’s federal criminal case, *United States v. Cunningham*, No. 2:22-cr-00061-RMP, is still pending.

1 institution,” as required by Rule 3(a)(2), Rules Governing Section 2254 Cases in
2 the United States District Courts (“Habeas Rule”)². ECF No. 14 at 2. Because it
3 appears that Petitioner lacks sufficient funds to prosecute this action, his request to
4 proceed *in forma pauperis*, ECF No. 10, is granted and this action may proceed
5 without payment of the filing fee.

6 By this action, Petitioner seeks to challenge pending federal criminal
7 proceedings in *United States v. Cunningham*, Case No. 2:22-cr-00061-RMP. *See*
8 ECF No. 1. at 2. Petitioner is represented by counsel in his pending criminal case.
9 Case No. 2:22-cr-00061-RMP, ECF Nos. 11, 18. Petitioner was arraigned on
10 September 15, 2022. Case No. 2:22-cr-00061-RMP, ECF No. 16 at 1. The United
11 States moved for Petitioner’s detention, and Petitioner waived his right to a
12 detention hearing that same day. Case No. 2:22-cr-00061-RMP, ECF Nos. 9, 16 at
13 1. However, Petitioner reserved the right to revisit the issue should his
14 circumstances change. Case No. 2:22-cr-00061-RMP, ECF No. 16 at 1. Petitioner
15 has not sought to revisit his release status in the pending criminal matter. Instead,
16 Petitioner seeks his release from pretrial detention through the instant petition. *See*

17
18
19 ² Habeas Rule 1(b) allows a district court to “apply any or all of these rules to a
20 habeas corpus petition not covered by Rule 1(a). *Id.*

1 ECF No. 1. He also seeks \$100,000,000.00 in “gold bullion” as a remedy. ECF
2 No. 1 at 7.

3 As an initial matter, monetary damages are not an available remedy in the
4 federal habeas corpus context. *See Nelson v. Campbell*, 541 U.S. 637, 646 (2004)
5 (noting that “damages are not an available habeas remedy”); *cf. Heck v. Humphrey*,
6 512 U.S. 477, 477 (1994) (holding a plaintiff bringing suit under 42 U.S.C. § 1983
7 can recover damages for unlawful imprisonment so long as they “prove that the
8 conviction or sentence has been reversed on direct appeal, expunged by executive
9 order, declared invalid by a state tribunal authorized to make such determination,
10 or called into question by a federal court's issuance of a writ of habeas corpus”).

11 In addition, it well established that a criminal defendant cannot use a petition
12 for writ of habeas corpus to challenge the district court’s orders or assert defenses
13 in a pending federal criminal prosecution. *See Jones v. Perkins*, 245 U.S. 390, 391
14 (1918) (“It is well settled that in the absence of exceptional circumstances in
15 criminal cases the regular judicial procedure should be followed and habeas corpus
16 should not be granted in advance of a trial.”); *see Riggins v. United States*, 199
17 U.S. 547 (1905). Moreover, Petitioner has retained the right to revisit his detention
18 in his criminal case and may have an additional non-extraordinary remedy in
19 seeking review of the detention order under 18 U.S.C. § 3145(b). Therefore,
20

1 Petitioner's challenges to the district court's actions in his federal criminal
2 prosecution must be dismissed.

3 Furthermore, the Court declines to interfere with another judge's assigned
4 case. *See Mullis v. U.S. Bankr. Ct. for Dist. of Nevada*, 828 F.2d 1385, 1393 (9th
5 Cir. 1987) ("[a] district court lacks authority to issue a writ of mandamus to
6 another district court."). "It would be inappropriate for this Court to issue any
7 order which could affect or interfere with another judge's handling of a case on his
8 or her docket." *Al-Ansi v. Obama*, 647 F. Supp. 2d 1, 13 (D. D.C. 2009);
9 *Delgrosso v. Hemingway*, No. 22-10158, 2023 WL 319920, at *4 (E.D. Mich. Jan.
10 19, 2023) (district court declining to vacate a separate district's orders and
11 judgement); *Muhammad v. Morrison*, No. 2:21-CV-12238-TGB-EAS, 2021 WL
12 5873007, at *1 (E.D. Mich. Nov. 4, 2021) (district court declining to consider
13 duplicative filing that was previously before another judge in the same district).

14 For the reasons stated above, Petitioner's petition is summarily denied.
15 Petitioner must properly pursue these issues in his pending criminal case before the
16 trial court.

17 Accordingly, **IT IS HEREBY ORDERED:**

18 1. The habeas corpus petition, ECF No. 1, is summarily **DISMISSED**
19 **WITH PREJUDICE.**

20
ORDER TO PROCEED *IN FORMA PAUPERIS* AND ORDER SUMMARILY
DISMISSING ACTION - 4

1 2. All pending motions are **DENIED as moot** and all pending hearings
2 are **STRICKEN**.

3 3. The Clerk's Office is directed to **ENTER JUDGMENT** and **CLOSE**
4 the file.

5 4. The Court certifies that, pursuant to 28 U.S.C. § 1915(a)(3), an appeal
6 from this decision could not be taken in good faith and there is no basis upon
7 which to issue a certificate of appealability. *See* 28 U.S.C. § 2253(c); Fed. R. App.
8 P. 22(b). A certificate of appealability is therefore **DENIED**.

9 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order
10 and provide copies to Petitioner at his last known address.

11 DATED March 20, 2023.

12 *s/Mary K. Dimke*
13 MARY K. DIMKE
14 UNITED STATES DISTRICT JUDGE